IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

S.T.R. No. 83 of 2003
(Old No. 1207/91)

The Commissioner, Sales Tax
U.P., Lucknow. .....Applicant/revisionist

Versus

S/S Dehradun Tea Co.
Ballupur, Dehradun .....Opposite Party/Respondent

Shri Syed Nadim, learned counsel for the revisionist.
None present for the respondent.

Hon'ble Prafulla C. Pant, J.

Heard.

2. This Revision, moved under Section 11 (1) of U.P. Trade Tax Act, 1948, is directed against the judgment and order dated 20.11.1990, passed by Sales Tax Tribunal, Dehradun Bench, in S.A. No. 807 of 1983.

3. Brief facts of the case are that assessee M/s Dehradun Tea Company is a tea producing company, which sells tea after processing and roasting the same. The assessee has shown sales of the tea to the tune of Rs. 6,04,098.50 for the assessment year 1980-81. However, sales of agricultural produce is exempted under U.P. Sales Tax Act, 1948. Under Section 8 (2-A) of Central Sales Tax Act, 1956 the commodity, which is exempted under the Local Sales Tax law is generally exempted except for the exception. No exceptions were shown before the authority concerned.

4. It is argued on behalf of the revisionist that the tribunal has erred in law in holding that the sale of tea produced and manufactured by assessee was exempted under Central Sales Tax Act. This Court is unable to accept the submission of learned counsel for the revisionist, for the reason that the tea produced by the assessee even after

grading and roasting before sale, remained agricultural produce as the green leaves, without grading and processing have no market value and gets rotten in the field itself. In Dehradun Tea Company Vs. Commissioner Sales tax, U.P.T.C. 1980 Pg. 459 read with Dy. Commissioner Vs. Sravan Core Rubber and Tea Company 1967Vol. 20 S.T.C. Pg. 520, an agriculturist of tea in such circumstances, cannot be said to be the dealer for the purposes of Sales Tax Act, 1948. Word 'dealer' is defined in Section 2(c) of U.P. Sales Tax Act, 1948. Proviso to said Section 2(c) of U.P. Sales Tax Act, 1948, reads as under:-

"*Provided that a person who sells agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as an owner, unsufructuary mortgagee, tenant, or otherwise, or who sells poultry or dairy products from fowls or animals kept by him shall not, in respect of such goods be treated as a dealer."*

As such, in view of above proviso, the respondent cannot be said to be a dealer for the purposes of imposition of sales tax.

5. Therefore, this Court does not find any infirmity in the impugned judgment and order passed by Sales Tax Tribunal and accordingly the revision is dismissed in limine.

(Prafulla C. Pant, J.)

Dt: 28th February, 2006
Sweta